

HOUSE BILL 86

IN THE HOUSE

January 8, 1979

Introduced and referred to
Committee on Taxation.

1 House BILL NO. 86
 2 INTRODUCED BY Huennen
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 6 CLARIFY TAXATION OF INCOME OF ESTATES AND TRUSTS; AMENDING
 7 SECTION 15-30-135, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 8 DATE."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 15-30-135, MCA, is amended to read:

12 "15-30-135. Tax on beneficiaries or fiduciaries of
 13 estates or trusts. (1) A tax shall be imposed upon either
 14 the fiduciaries or the beneficiaries of estates and trusts
 15 as hereinafter provided, except to the extent such estates
 16 and trusts shall be held for educational, charitable, or
 17 religious purposes, which tax shall be levied, collected,
 18 and paid annually with respect to the income of estates or
 19 of any kind of property held in trust, including:

20 (a) income received by estates of deceased persons
 21 during the period of administration or settlement of the
 22 estate;

23 (b) income accumulated in trust for the benefit of
 24 unborn or unascertained persons or persons with contingent
 25 interests;

1 (c) income held for future distribution under the
 2 terms of the will or trust;

3 (d) income which is to be distributed to the
 4 beneficiaries periodically, whether or not at regular
 5 intervals, and the income collected by a guardian of an
 6 infant, to be held or distributed as the court may direct;
 7 and

8 (e) income of an estate during the period of
 9 administration or settlement permitted by subsection (3) of
 10 this section [section 2] to be deducted from the net income,
 11 the tax with reference to which is to be paid by the
 12 fiduciary.

13 (2) The fiduciary shall be responsible for making the
 14 return of income for the estate or trust for which he acts,
 15 whether the fiduciary or the beneficiaries be taxable with
 16 reference to the income of such estate or trust. ~~The net~~
 17 ~~income of an estate or trust shall be computed in the same~~
 18 ~~manner and on the same basis as provided in this chapter for~~
 19 ~~individual taxpayers, except that there shall also be~~
 20 ~~allowed as a deduction any part of the gross income which~~
 21 ~~pursuant to the terms of the will or deed creating the~~
 22 ~~trust is paid to or held for the United States or any~~
 23 ~~state, territory, or any political subdivision thereof or~~
 24 ~~the District of Columbia.~~ In cases under subsections (d) and
 25 (e) of subsection (1) of this section, the fiduciary shall

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1 include in the return a statement of each beneficiary's
2 distributive share of such net income, whether or not
3 distributed before the close of the taxable year for which
4 the return is made.

5 (3) In cases under subsections (a), (b), and (c) of
6 subsection (1) of this section, the tax shall be imposed
7 upon the fiduciary of the estate or trust with respect to
8 the net income of the estate or trust and shall be paid by
9 the fiduciary, except that in determining the net income of
10 the estate of any deceased person during the period of
11 administration or settlement, there may be deducted the
12 amount of any income properly paid or credited to any
13 legatee, heir, or other beneficiary. In such cases, the
14 fiduciary of the estate or trust shall be allowed the same
15 exemptions as are allowed to single persons under 15-30-112
16 and the fiduciary of any estate or trust created by a person
17 not a resident or of an estate of a person not a resident
18 shall be subject to a tax only to the extent to which
19 individuals other than residents are liable under 15-30-131.

20 (4) (a) There shall be allowed as an additional
21 deduction in computing the net income of the estate or trust
22 the amount of the income of the estate or trust for its
23 taxable year which is to be distributed currently by the
24 fiduciary to the beneficiaries and the amount of the income
25 collected by a guardian of an infant, which is to be held or

1 distributed as the court may direct, but the amount so
2 allowed as a deduction shall be included in computing the
3 net income of the beneficiaries whether distributed to them
4 or not. Any amount allowed as a deduction under this
5 subsection shall not be allowed as a deduction under
6 subsection (4)(b) of this section in the same or any
7 succeeding taxable year. The beneficiaries of an estate or
8 trust are to include in their gross income for the taxable
9 year the amounts of income currently required to be
10 distributed to them for such year, whether or not actually
11 distributed.

12 (b) In the case of income received by estates of
13 deceased persons during the period of administration or
14 settlement of the estate and in the case of income which in
15 the discretion of the fiduciary may be either distributed
16 to the beneficiary or accumulated, there shall be allowed as
17 an additional deduction in computing the net income of the
18 estate or trust the amount of the income of the estate or
19 trust for its taxable year which is properly paid or
20 credited during such year to any legatee, heir, or
21 beneficiary, but the amount so allowed as a deduction shall
22 be included in computing the net income of the legatee
23 heir, or beneficiary.

24 (c) If the taxpayer's net income for such taxable year
25 is computed upon the basis of a period different from that

1 upon the basis of which the net income of the estate or
 2 trust is computed, then his distributive share of the net
 3 income of the estate or trust for any accounting period of
 4 such estate or trust ending within the fiscal or calendar
 5 year shall be computed upon the basis on which such
 6 beneficiary's net income is computed. In such cases, a
 7 beneficiary not a resident shall be taxable with respect to
 8 his income derived through such estate or trust only to the
 9 extent provided in 15-30-131 for individuals other than
 10 residents.

11 (5) The fiduciary of a trust created by an employer as
 12 a part of a stock bonus, pension, or profit-sharing plan for
 13 the exclusive benefit of some or all of his employees, to
 14 which contributions are made by such employer or employees,
 15 or both, for the purpose of distributing to such employees
 16 the earnings and principal of the fund accumulated by the
 17 trust in accordance with such plan, shall not be taxable
 18 under this section, but any amount contributed to such fund
 19 by the employer and all earnings of such fund shall be
 20 included in computing the income of the distributee in the
 21 year in which distributed or made available to him.

22 (6) Where any part of the income of a trust other than
 23 a testamentary trust is or may be applied to the payment of
 24 premiums upon policies of insurance on the life of the
 25 grantor (except policies of insurance irrevocably payable

1 for the purposes and in the manner specified relating to the
 2 so-called "charitable contribution" deduction) or to the
 3 payment of premiums upon policies of life insurance under
 4 which the grantor is the beneficiary, such part of the
 5 income of the trust shall be included in computing the net
 6 income of the grantor."

7 NEW SECTION. Section 2. Computation of taxable income
 8 of estates and trusts. (1) Except as otherwise provided in
 9 15-30-135, the taxable income of an estate or trust is the
 10 federal fiduciary income tax taxable income as defined by
 11 section 641(b) of the Internal Revenue Code or as section
 12 641(b) may be renumbered or amended, with the following
 13 adjustments:

14 (a) add any interest received on obligations of
 15 another state or territory or county, municipality,
 16 district, or other political subdivision thereof;

17 (b) add any refunds received of federal income tax, to
 18 the extent the deduction of such tax resulted in a reduction
 19 of Montana income tax liability;

20 (c) add the amount of Montana income tax claimed as a
 21 deduction for federal fiduciary income tax purposes;

22 (d) add the amount of "includable gain" income
 23 excluded from gross income for federal fiduciary income tax
 24 purposes by section 641(c) of the Internal Revenue Code or
 25 as section 641(c) may be renumbered or amended;

1 (e) add the amount of administrative expenses claimed
2 as a deduction for federal fiduciary income tax purposes to
3 the extent such administrative expenses were also claimed as
4 a deduction in the determination of Montana inheritance tax;

5 (f) subtract any interest income from obligations of
6 the United States government, the state of Montana and its
7 counties, municipalities, districts, or other political
8 subdivisions thereof;

9 (g) subtract all benefits received under the federal
10 employees retirement act not in excess of \$3,600;

11 (h) subtract all benefits paid under the teachers'
12 retirement law which are specified as exempt from taxation
13 by 19-4-706;

14 (i) subtract all benefits paid under The Public
15 Employees' Retirement System Act which are specified as
16 exempt from taxation by 19-6-705;

17 (j) subtract all benefits paid under the highway
18 patrol retirement law which are specified as exempt from
19 taxation by 19-6-705;

20 (k) subtract all Montana income tax refunds or credits
21 thereof;

22 (l) subtract all benefits paid under 19-11-602,
23 19-11-604, and 19-11-605 to retired and disabled
24 firefighters, or to their surviving spouses or orphans;

25 (m) subtract all benefits paid by first- or

1 second-class cities for the policemen's retirement system
2 provided for by Title 19, chapter 9; and

3 (n) subtract the amount of federal income tax paid
4 within the taxable year.

5 (2) In the case of a shareholder of a corporation with
6 respect to which the election provided for under subchapter
7 S. of the Internal Revenue Code of 1954, as amended, is in
8 effect but with respect to which the election provided for
9 under 15-31-202, as amended, is not in effect, adjusted
10 gross income does not include any part of the corporation's
11 undistributed taxable income, net operating loss, capital
12 gains or other gains, profits, or losses required to be
13 included in the shareholder's federal income tax adjusted
14 gross income by reason of the election under subchapter S.
15 However, the shareholder's adjusted gross income includes
16 actual distributions from the corporation to the extent they
17 would be treated as taxable dividends if the subchapter S
18 election were not in effect.

19 NEW SECTION. Section 3. Computation of tax -- surtax.
20 The amount of tax is determined by applying the rates
21 contained in 15-30-103 and 15-30-104 to the taxable income
22 of an estate or trust in the same manner as used in
23 determining the tax on the taxable income of individuals.

24 Section 4. Effective date. This act is effective upon
25 passage and approval and applies to taxable periods

LC 0538/01

1 beginning after December 31, 1978.

-End-

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STATE OF MONTANA

REQUEST NO. 445-79

FISCAL NOTE

Form BD-15

In compliance with a written request received March 9, 19 79, there is hereby submitted a Fiscal Note for House Bill 86 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION

This proposed bill generally revises and clarifies taxation of income of estates and trusts.

FISCAL IMPACT

The proposed law is considered by the Department of Revenue to be primarily a "house-keeping" measure which clarifies the manner in which the income of estates and trusts is taxed, and which should also minimize taxpayer compliance problems. If enacted, the bill may result in a slight increase in income tax receipts, because of some changes in the way in which taxable income is computed (see technical note).

EFFECT ON LOCAL GOVERNMENT

No local impact.

TECHNICAL NOTE

At the present time in Montana the taxable income of estates and trusts is computed in the same manner and on the same basis as for individuals; however, the provisions of Montana's tax law which pertain to individuals are not particularly suitable for determining the net income of estates or trusts. The proposed law would accommodate the particular circumstances of fiduciary income by providing a more explicit, specialized treatment which would be more compatible with the federal laws regarding taxation of estates and trusts.

(Prepared by the Department of Revenue)

Richard L. Hays
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3/9/79